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LAW AND THE GOSPEL

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APPLIED TO THE QUESTIONS

BEFORE THE

DIOCESAN CONVENTION

OF THE

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EPISCOPAL CHURCH

OF THE

DIOCESE OF SOUTH CAROLINA.

1887.

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Dr. Arthur B. Flagg

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THE LAW AND THE GOSPEL.

RIGHTS OF CLERGYMEN

UNDER THE

CONSTITUTION AND CANONS OF THE CHURCH.

THE EXCLUSION OF A COLORED DELEGATE FROM THE DIOCESAN CONVENTION A VIOLATION OF THE CONSTITUTION OF THE CHURCH AND OF THE FUNDAMENTAL PRINCIPLES OF CHRISTIANITY.

THE RACE ISSUE SQUARELY MET.

The following paper was prepared by Col. E. M. Seabrook, to be read before the Diocesan Convention; but the Convention having adopted the ten-minute rule of speaking, it could not be read, and at the request of his friends, Col. Seabrook has consented to its publication:

How and when is the Convention organized?

This question must be determined by the Constitution and Canons of the Protestant Episcopal Church in South Carolina.

The first step in the organization of this Convention, like other legislative bodies, is the calling of the body to order, and the securing of the necessary officers. Happily this Convention is relieved of all embarrassment on this point.

Article V of the Constitution prescribes that "the Bishop of the Diocese shall be *ex officio* President of the Convention."

Article VI, Section 1, prescribes that "the other officers of the Diocese shall be a Secretary, a Treasurer and Registrar."

Section 2 prescribes that "the Secretary shall be elected at each annual Convention by ballot (unless the ballot be unanimously dispensed with,) and shall continue in office until his successor be appointed."

Section 3 prescribes that "the Treasurer shall be elected in the same manner."

Section 4 prescribes that "the Registrar shall be appointed by the Bishop, to serve for three years."

This Convention then has its organization completed, so far as its officers are concerned. It has a President, Secretary, Treasurer and Registrar.

The next question is as to the composition of the Convention :

Article III of the Constitution determines this question, and is as follows: "The Convention shall be composed of clergymen and laymen—two distinct orders."

Sections 2 and 3 of said Article prescribe what clergymen shall be entitled to seats in the Convention. Section 2 prescribes: "That the Bishop, the Assistant Bishop (when there is one), and every other clergyman who has been actually as well as canonically, resident within the Diocese for the space of twelve calendar months next before the meeting of the Convention, and has for the same period been performing the duties of his station as rector, minister or assistant minister of a parish, or as a missionary acting under the ecclesiastical authority of this Diocese, or as a chaplain in any public or benevolent institution, or as a professor in the theological seminary of the diocese, or who, after a continued service of at least twenty years in this diocese, by the infirmities of health or age may have been incapacitated for further active duties of the ministry, and has presented his annual report to the ecclesiastical authority, shall be entitled to all the privileges of a member of the Convention."

Section 3 prescribes that "every other clergyman in good standing, canonically resident in the Diocese, shall be entitled to all the privileges of the Convention, except the right to vote."

As to laymen, Section 4 of Article III defines who shall be laymen, and is as follows:

“Lay Deputies, not exceeding four in number, shall be elected by each parish or congregation in union with this Convention from among the members thereof to represent it in the Convention; such Deputies shall serve for one stated Convention, and shall, before they are permitted to take their seats, produce written testimonials of their election.”

The next question is: What number of Clergyman and Lay Deputies shall constitute a quorum to perfect the organization of the Convention and to transact business?

Article IV of the Constitution determines this question.

That Article prescribes that “ten members of the clerical order and lay representatives of ten churches shall constitute a quorum for the transaction of business generally, but any number of either order that shall assemble may adjourn from day to day until a quorum is formed.”

The next question is: How is a quorum to be ascertained?

This is also determined by the organic law of the Convention.

First, as to the Clergy:

Canon 1 prescribes: “That within one week before the meeting of every Convention of this Diocese, the Bishop, or if there be no Bishop, the Standing Committee shall prepare, or cause to be prepared, a list of all clergymen canonically resident in the Diocese, annexing the names of their respective parishes or cures, or of their stations as missionaries, &c., designating all those who are entitled to all the privileges of the Convention, and those who are entitled to seats but not to votes. And such list shall be laid before the Convention immediately after it shall have been called to order on the first day of meeting, and the names of the clerical members called therefrom, and it shall be taken as presumptive evidence of the privileges of clergymen in the Convention: Provided, that if question be made, the rights of any clergyman shall be determined according to the provisions of the Constitution by the Convention itself, whether his name be inserted in the list aforesaid or not.”

This canon, then, makes it the duty of the Bishop, or, if there be no Bishop, of the Standing Committee, one week before the meeting of every Convention of the Diocese, to prepare a list of all clergymen, canonically resident in the Diocese, annexing the names of their respective parishes, &c., in which they are engaged, &c., designating those who are entitled to all the privileges of the Convention, and those who are entitled to seats and not to vote.

And that such list shall be laid before the Convention immediately after it shall be called to order on the first day of the meeting of the Convention, and the names of the clerical members called therefrom.

Second, as to the Laity :

As we have seen, Section 4, Article III, prescribes that Lay Deputies, not exceeding four in number, shall be elected by each parish or congregation in union with this Convention to represent it in the Convention, and that such Deputies shall, before they are permitted to take their seats, produce written testimonials of their election.

The list of the Clergymen of the Diocese, entitled to the privileges of the Convention, prepared by the Bishop, or the Standing Committee if there be no Bishop, and "the written testimonials" of the election of the Lay Delegates having been laid before the Convention, as prescribed by Canon 1 and Section 4 of Article III of the Constitution, what is the next step in the ascertainment of a quorum and the completion of the organization of the Convention?

Section 3 of Canon 8 prescribes the *modus operandi* of doing this, and is as follows: "When the Convention shall have been called to order, the Secretary shall proceed to call the names of the Clergy, and then of parishes and Deputies, after which, if a quorum be found present, the President shall declare the Convention duly organized, provided that no Deputy whose seat may be contested shall have place on his list."

What is the object of calling the roll? It is to ascertain whether the number of Clergy and Lay Deputies, required by Article IV. of the Constitution to constitute a quorum, is

present. After this duty, imposed upon the Secretary by the canon, is performed, and a quorum is found present, *the canon makes it the duty of the President to declare the Convention DULY organized.**

Section 3 of Canon 8, says: "After the names of the Clergy and then of parishes and Deputies have been called by the Secretary, and a quorum be found present, *the President shall declare the Convention DULY organized.*"

In ascertaining a quorum the clergy whose names are on the list of the Bishop, and answering to them, are entitled to the privileges of the Convention, *because the Canon prescribes that the list shall be evidence of their right to take their seats in the Convention UNTIL their rights are determined by the Convention, according to the provision of the Constitution, and this even when question is made to the right of a clergyman's seat.*

And the canon is in accordance with the common law on this point, and the principle is this, that when a certain duty is imposed by law upon an officer, the presumption is that the duty is properly performed until the contrary is made to appear. The organic law having imposed upon the Bishop the duty of preparing a list of the Clergymen in his Diocese entitled to seats in the Convention, and laying the same before the Convention, the presumptive evidence is that the list is correct until the contrary is made to appear.

With regard to the Lay Deputies, the canon expressly provides that in ascertaining a quorum upon the roll-call of deputies, no deputy whose seat is contested shall have a place on the list; in other words, his name shall not be counted in ascertaining a quorum.

His right would have to be determined after the organization of the Convention, by the Convention, and upon the report of the Committee on Credentials. Should no question be made as to his right to his seat, the same presumption holds good as in the case of clergymen; and he holds

*NOTE.—The word *duly*, according to Webster, means *properly, fitly*, and when a Convention is *duly organized* the *idea of a temporary organization is precluded.*

his seat subject to the report of the Committee on Credentials of Lay Deputies, and *the final action of the Convention on the same.*

The duty of the President then, under the organic law, as soon as a quorum is found to be present by the calling of the roll by the Secretary, as prescribed by the Canon, *is to declare the Convention DULY organized.* The rules of order of the Convention are in accordance with the above views. The first rule of order is as follows: "AFTER the Convention has been DULY organized, and the Committee on Credentials appointed, the order of proceedings for the first day shall be," &c.

Will it be said that this would preclude the Convention from determining what Clergymen and what Lay Deputies are entitled, under the Constitution and Canons, to seats in the Convention?

Not at all.

Section 4 of the same Canon 8 prescribes *that after the Convention shall have been declared DULY organized by the President, Committees on Credentials SHALL THEN be appointed,* and is as follows: "Two Committees on Credentials SHALL THEN BE APPOINTED (that is after the Convention shall have been declared DULY organized), the first consisting of three clergymen, to whom the roll of the Clergy shall be referred; the other of three laymen, to whom shall be referred the roll of Lay Deputies, together with the certificates of their appointment, and the list of the Treasurer required by Canon 10, Section 11. And these committees *respectively* shall examine forthwith and report to the Convention upon the lists so referred, the latter specifying in their report which parishes are entitled to all the privileges of the Convention, and which are by Article VIII of the Constitution debarred from voting until admitted by a vote of the Convention. Should the committee have considered any certificates unsatisfactory, these shall be taken up and the question of their sufficiency settled."

Now what are the duties of these Committees on Credentials?

First as to the duty of the committee on the credentials of clergymen:

The Canon determines this. The Canon prescribes that the roll of the Clergy shall be referred to this committee. What roll? Why the roll of the names of the clerical members, who have answered when called by the Secretary under Section 8, Canon 3, from the list of the clergymen required to be laid before the Convention immediately after it shall have been called to order on the first day of its meeting by the Bishop, or the Standing Committee, if there be no Bishop, as prescribed by Canon 1.

Now, what is the Committee to report upon?

Evidently upon the *correctness of the roll made by the Secretary*. The Canon does not impose upon the Committee the duty of determining and reporting upon the rights of the clergymen to the privileges of the Convention, whose names are on the roll referred to them. The Committee simply report that *the names of the Clergy on the roll made by the Secretary are on the list furnished by the Bishop, and who of them are present*. The adoption of this report by the Convention is *simply an endorsement of the correctness of the roll made by the Secretary*.

The question here properly arises, has the Convention the power to determine the rights of clergymen to the privileges of the Convention, and, if so, to what extent?

Canon 1 determines this. It prescribes that *the names of the clerical members, called by the Secretary from the list furnished by the Bishop, shall be taken as presumptive evidence of the privileges of clergymen in the Convention, "provided that if question be made, THE RIGHTS OF ANY CLERGYMAN SHALL BE DETERMINED according to the provisions of the Constitution by THE CONVENTION ITSELF, (that is as a duly organized body,) whether his name be inserted in the list or not."*

It is evident that the above Canon gives the Convention the power of determining the right of any clergyman to the privileges of the Convention, whose name is on the roll made by the Secretary from the list furnished by the Bishop; but the power is limited to determining *whether the clergyman has*

*the qualifications required by the Constitution to entitle him to the privileges of the Convention. The Convention cannot of its own volition, or its *ipse dixit*, entitle him to the privileges of the Convention. The Constitution gives him the right to a seat under certain qualifications and THE CONVENTION can only pass upon his qualifications as prescribed by the Constitution. The Convention is a constitutional body, and must be governed in its action by its organic laws, viz: ITS CONSTITUTION AND CANONS.*

When it ceases to do this, or, in other words, "camps outside of its Constitution and Canons," *it is no longer a constitutional body.* It is only a public assembly, *a revolutionary body.* It is true that the members of the Convention are not required to take an oath to support its Constitution, and Canons, as in legislative bodies, but they are, nevertheless, under an *implied moral obligation* to obey and support them, as if they had taken *a solemn oath* so to do.

What are the qualifications that entitle a clergyman to the privileges of the Convention, as prescribed by its Constitution and Canons?

The first requisite is that *he must have been ordained according to the sacred rite of ordination prescribed by the Constitution and Canons of the Protestant Episcopal Church in the United States of America.* The next, that *he must be recognized by the Bishop of the Diocese.* And the last is that *he should have been actually, as well as canonically, resident within the Diocese for the space of twelve calendar months next before the meeting of the Convention, and that he should have been for the same period performing the duties of his station as rector, minister or assistant minister of a parish.* If the clergyman has the above qualifications, he is entitled to all the privileges of the Convention by virtue of the Constitution, and cannot be deprived of his privileges by any vote of the Convention. Any attempt on the part of the Convention to do this would be UNCONSTITUTIONAL AND REVOLUTIONARY.

Should the right of any clergyman to the privileges of the Convention be questioned, what is the proper mode of proceeding?

I hold that it should be done by a resolution, which should state that A, whose name is on the roll of clergymen

made by the Secretary from the list furnished by the Bishop, and reported upon by the Committee upon Credentials, does not possess the qualifications required by the Constitution to entitle him to the privileges of the Convention. This mode of stating the question brings definitely before the Convention the issue which only it has the power to decide, viz: *Whether the clergyman whose right to a seat in the Convention is questioned has the necessary qualifications prescribed by the Constitution.* This resolution may be referred to the Committee on Credentials as a special matter, or to a Special Committee to report upon.

As to the Report of the Committee on the Credentials of Lay Deputies, Section 4 of Article III of the Constitution provides that Lay Deputies, not exceeding four in number, shall be elected by each parish in union with the Convention to represent it in the Convention; and shall, before they are permitted to take their seats, produce written testimonials of their election. Section 2 of Canon 4 enforces this article of the Constitution by declaring that it shall be the duty of every parish in union with the Convention to send Deputies to every Convention; and Section 3 of the same Canon prescribes the form of the certificate to be presented by the Lay Deputies.

What, then, is it the duty of the Committee to report upon?

Section 4 of Canon 8 determines this. It prescribes that this Committee shall report:

First, whether the parishes, whose representatives claim seats in the Convention, are entitled, under Canon 5, to representation in the Convention.

Second, whether the written testimonials or certificates of election presented by them are in accordance with Section 3 of Canon 4.

Upon the report of the Committee the CONVENTION has the power to determine whether the parishes claiming representation in the Convention have the right to representation under the Canon, and whether the certificates of election presented by their Deputies are in accordance with the Canons.

If the Lay Deputies to the Convention have the qualifications prescribed by the Constitution and Canons, they are entitled to their seats, and cannot be deprived of the same by a mere vote of the Convention (sua sponte), nor can any one claiming a seat be entitled to the privileges of the Convention, by a vote of the Convention, unless he has the qualifications prescribed by the Constitution and Canons.

The report of these Committees are legitimate subjects for the consideration of the Convention, and are unquestionably in order.

The question may be raised as to the proper form of stating the question when an appeal is taken from the decision of the Chair.

In legislative bodies the form adopted is: "Shall the decision of the Chair be sustained, or shall the decision of the Chair stand as the judgment of the house?" The President of the Convention is the head and mouthpiece of the body, and his rulings or decisions are presumed to be those of the body until they are overruled by the body itself. The mode of stating the question of appeal as formulated above has been adopted by legislative bodies as best adapted to ascertaining the opinion of the majority. In a single body this mode of stating the question of appeal unquestionably ascertains the opinion of the majority; but in a body composed of two orders, voting by orders, it does not. Should the orders vote differently, the decision of the Chair would be overruled when there was not a majority of both orders either for or against it. The same result would take place should the two orders vote differently, even if the appeal from the decision of the Chair be stated in the following form, viz: "Shall the appeal from the decision of the Chair be sustained?" But I hold that Article VII of the Constitution relieves the Convention of all embarrassment on this point. It prescribes that "ON ALL QUESTIONS, unless otherwise provided by the Constitution (when the Convention votes by orders), a majority of both orders shall in each case be NECESSARY TO A DECISION."

Now, then, no matter in what form the appeal from the

decision of the Chair be stated, if the two orders of the Convention vote differently, *the result is that there is no decision by the Convention*, and there being no decision by the Convention, it follows that the decision of the Chair will stand as the decision of the Convention.

But, after all, the questions which have been considered are mere surface questions. There is a question of greater import, which underlies them. And it is a question whose importance cannot be exaggerated; and that question is the race question. It was presented to the Convention of this Diocese two years ago by Mr. Benet, of Abbeville, in the shape of a resolution to the effect that the Report of the Committee on the Credentials of the Clergy be amended by striking out the names of the Rev. Messrs. Bishop and Harper, two colored clergymen to the Convention, and referring the question of their eligibility to a Committee of Five (two clergymen and three laymen) to report to the next Convention. This resolution had at least the merit of frankness, which cannot be said of the questions subsequently raised, as they are designed to accomplish indirectly what this resolution proposed to do directly. The question is: Shall a clergyman, *ordained according to the sacred rites of ordination prescribed by the Constitution and Canons of the Protestant Episcopal Church in the United States of America, and admitted as such into this Diocese by the Bishop of this Diocese, and having all the qualifications prescribed by the Constitution and Canons of the Episcopal Church of this Diocese, be denied his seat in this Convention, simply because his skin is not white?*

I propose to consider this question in two aspects: First, as it effects the Church of this Diocese in its relation to the Protestant Episcopal Church in the United States of America, of which it is a constituent part; and, second, as it affects this Church as a Christian Church.

First. What is the relation of the Episcopal Church of the Diocese of South Carolina to the Protestant Episcopal Church in the United States of America?

The first Article of the Constitution of the Church of this Diocese expresses this relation, and is as follows: “*The*

Church of this Diocese accedes to and adopts the Constitution and Canons of the Protestant Episcopal Church in the United States of America, and acknowledges their authority accordingly." The adoption, then, of the Constitution and Canons of the Protestant Episcopal Church in the United States of America is the first and fundamental article of the Constitution of the Church of this Diocese, and that adoption makes that Constitution, and those Canons the Constitution, and Canons of this Church, and of as paramount force as its own Constitution and Canons as long as it remains a constituent part of the Protestant Episcopal Church in the United States of America; *and this Church cannot constitutionally, and legally enact any legislation which violates in letter or spirit the Constitution and Canons of the Protestant Episcopal Church in the United States of America.*

Now, Title I, Canon 16 (see Appendix) of the Protestant Episcopal Church in the United States enacts that *the Bishop of every Diocese in union with the Protestant Episcopal Church in the United States of America shall deliver to the Secretary of the General Convention a list of the names of all the clergymen in his Diocese.*

Should the Bishop fail to discharge his duty in reporting to the Secretary of the General Convention the name of a clergyman whom he had recognized as a clergyman of his Diocese, he would render himself liable to a presentment for trial under Canon 9, Title II, (see Appendix) of the Protestant Episcopal Church in the United States of America. A Bishop is not tried under the Constitution and Canons of the Church of his Diocese, but under those of the Protestant Episcopal Church in the United States of America.

Now, then, having received a clergyman into his Diocese and reported his name to the Secretary of the General Convention of the Protestant Episcopal Church in the United States as a clergyman of his Diocese, *how can he possibly avoid placing his name on the list of clergymen of his Diocese*, as required by Canon 1 of this Church, to be laid before the Convention of his Diocese? Such a failure of duty would not only be a violation of all principle and an unworthy

abandonment of the official duty of his high and holy office, but, as a violation of the Constitution and Canons of his Diocese, would also subject him to trial under Canon 9 of the Protestant Episcopal Church in the United States.

I trust that history will never record that a Bishop of the Protestant Episcopal Church in the United States of America will ever so stultify himself and discredit his high and holy office.

Now, take the Constitution and Canons of the Episcopal Church in the United States of America, and there cannot be found one sentence, or word which would countenance the idea that it was a *race Church*; its whole history refutes incontestably such an idea. *It bestows upon colored men the highest office of the Church, that of Bishop, and commissions them as its representatives to preach the Gospel of Christ to all men. Under its Constitution and Canons colored men are ordained clergymen.* How, then, can a Diocese which is a constituent part of the Protestant Episcopal Church in the United States of America, by the adoption of its Constitution and Canons, maintain the position that a clergyman who has been regularly ordained under the Constitution and Canons of the Protestant Episcopal Church in the United States of America shall not be entitled to the privileges of a clergyman in the Diocese of South Carolina because he is not a white man? Why, this would be a species of ecclesiastical nullification. How can a Diocese take such a position, and *expect to be allowed to participate in the government of the Episcopal Church of the United States?*

And again, there is not a Southern Diocese of the Episcopal Church which has occupied such a position. Is this Diocese prepared to isolate itself on this question? I trust its sober second thought will not permit it to do so, for it is a position which cannot be maintained.

I have heard it said that, if a colored clergyman is admitted to a seat in the Convention, it will lead to the social equality of the white and colored races. It must be confessed that when this is said by grown men, it is with difficulty that one's impatience is restrained. Social equality is governed

by laws as fixed as the laws of gravitation. Since the origin of man society has formed itself. People of like tastes, habits and education associate together, and no laws can make it otherwise.

“'Tis the eye of childhood that fears a painted devil.”

And lastly, I propose to consider this question as it affects this Church as a Christian Church, or in its Christian aspect. I hold that to exclude a clergyman from a seat in this Convention—who has been duly ordained under the Constitution and Canons of the Episcopal Church of the United States, and who has the qualifications prescribed by the Constitution and Canons of the Episcopal Church of this Diocese, and whose name has been placed on the list of the Bishop—*because he is not a white man*, is not only a violation of the Constitution and Canons of the Episcopal Church of the United States and also of this Diocese, but it is a violation of the fundamental principles of Christianity.

Before the coming of Christ, religion was national, and was moulded by the distinctive character of the respective nations. The Hebrews regarded other people as Gentiles, the Greeks and Romans regarded other nations as barbarians and enemies, and as fit subjects for conquest, spoliation and slavery. But with the coming of Christ, a new religious era dawned upon mankind. The announcement was made to mankind of the *sublime doctrine of a God, and Father of all, a Saviour of all who believe, and a common inheritance for all God's children, and its logical result—the great and glorious doctrine of the brotherhood of mankind.* In the history of man, no human imagination had ever conceived, or human lips given utterance to, such a doctrine. It bore the impress of divinity. Christ was national, but the world was his country, and the human race his countrymen. Theologians may invent dogmas and build theological systems upon them, and they may change and disappear, but this grand doctrine of the brotherhood of mankind enunciated by Christ—this living principle of Christianity, has

made it stronger than armies with banners—has made it a conqueror in the past, and will make it a conqueror in the future, until the last trump shall be sounded, and the whole human race be summoned before the judgment seat. I would that I had the ability and time to dwell upon this subject, and show the wonderful good and countless blessings that this doctrine has brought to mankind. For some of its great results I would refer to the noble Institutions of Charity for suffering and sorrowing humanity; to the grand seats of learning for the education and elevation of the people. I might dwell upon the efforts of its heroic missionaries; upon its beneficent influence in mitigating the cruelties of war, and impressing the Spirit of Peace upon all nations under its sway; and upon its regenerating power in the elevation of woman, and the progress of human liberty.

But time will only permit me to recall a grand illustration of this Divine principle. When our own city, less than a year ago, was stricken by a terrible calamity, which brought ruin and distress upon her, the hearts of this great American people, and even of those in distant lands, were moved in generous sympathy. Promptly and freely they lavished their treasure upon us for the relief of all sufferers, without regard to race or color. It is one of the grandest exhibitions in history of that living principle of Christianity, the brotherhood of mankind. It is indeed monumental.

To make ~~the~~ *Christian Church a race Church*, is to attempt to put back the hands on the clock of time over two thousand years, and to get back to the period before the birth of Christ—and *this in the Nineteenth Century!* It cannot be done; it is an impossibility.

I trust that the sober second thought of our brethren of the Diocese will enable this Diocese to settle this question, and to act in harmony with her sister Dioceses, which compose the grand and glorious Episcopal Church of the United States, in America, and contribute her faithful aid to that Church in her great mission of teaching to all mankind the doctrines of her Master and founder, JESUS CHRIST.

APPENDIX.

TITLE I, CANON 16.

§1. "The Secretary of the House of Clerical and Lay Deputies shall keep a register of all clergy of this Church, whose names shall be delivered to him in the following manner, that is to say: Every Bishop of this Church, or where there is no Bishop, the Standing Committee of the Diocese, shall, at the time of every General Convention, deliver, or cause to be delivered, to the said Secretary, a list of the names of all the ministers of this Church in their proper Diocese, annexing the names of their respective cures, or of their stations in any colleges, or other seminaries of learning; or in regard to those who have not any cures, or other stations, and, also, with particulars of time and place of all ministers belonging to the Diaconate, or the Priesthood, or have been deposed, or have died since the preceding General Convention; and the said list shall, from time to time, be published in the journals of the General Convention."

TITLE II.

§1. Any Bishop of this Church may be presented for trial on charges for the following offences—offences enumerated—among them: "Violation of the Constitution or Canons of the General Convention;" "Violation of the Constitution and Canons of the Diocese to which he belongs."

ADDENDA.

A STATEMENT OF THE MAIN FACTS AS TO THE ORGANIZATION OF THE CONVENTION, THE PARLIAMENTARY QUESTIONS RAISED THEREIN, AND THE LAW APPLICABLE TO THE SAME.

The Ninety-seventh Convention of the Diocese of South Carolina was called to order by the President, the Bishop, " *ex-officio*," at the appointed time and place, and the Secretary proceeded to call the names of the Clergy and then of the Parishes and Deputies as required by Canon VIII, Section III, and it was found that 36 Clergymen and 58 Lay Deputies from 31 Parishes, entitled to representation in the Convention, had answered to their names; also, that the seat of no Lay Deputy on the Roll of the Secretary was contested. Article IV of the Constitution prescribing that ten members of the Clerical Order and Lay Representatives of ten churches shall constitute a quorum, and *a constitutional quorum being found present*, the President in the discharge of the duty imposed upon him by Section III of Canon VIII, *declared the Convention duly organized*.

The President then appointed two Committees on Credentials—one of three Clergymen, to whom the Roll of the Clergy was referred, and the other of three Laymen, to whom the Roll of the Lay Deputies was referred, with the certificates of their appointment and the list of the Treasurer, as required by Canon X, Section II.

The President then read his Annual Address to the Convention.

The Committee on Credentials of the Clergy then made their report, to the effect "that the Roll of the Clergy made by the Secretary from the List of Clergymen laid before the Convention by the Bishop, and answering to their names,

was correct." A motion was then made to adopt this report by Mr. E. M. Seabrook. After some discussion, Col. J. C. Haskell then seconded Mr. Seabrook's motion for the adoption of the report, with the amendment "that the name of the Rev. J. H. M. Pollard be stricken from the list." An extended debate took place upon the merits of the question of admitting colored clergymen into the Convention, and lasted to the hour of adjournment.

The Convention met the next day, pursuant to adjournment, additional delegates presented their credentials, and *the constitutional quorum was still further increased.*

Mr. Benet then moved the previous question, but after some discussion withdrew it, and moved that the debate be closed, which was carried but by one dissenting voice. The motion of Mr. Haskell to amend the Report of the Committee on Credentials of the Clergy was then put to the Convention, and was lost by the following vote: Clergy, yeas, 3; nays, 28. Laymen, yeas, 22: nays, 12.

The adoption of the original Report of the Committee, on motion of Mr. Seabrook, became the question before the Convention; and when the question was being put, on a call vote by Orders, Mr. Jersey asked to withdraw the call for a vote by Orders, with the intention, as he said, of dividing the Report. "He proposed, first, to vote '*riva voce*' on the first roll, viz: of clergymen entitled to a seat, and to a vote, concerning which there was no difference of opinion; and then to take up the other roll, on which Mr. Pollard's name appeared." Upon being informed that he could not withdraw the call for a vote by Orders, Mr. Jersey withdrew what he had said. Col. McCrady then renewed the suggestion of Mr. Jersey. Mr. Seabrook here said that the amendment of Mr. Haskell, to strike out the name of the Rev. Mr. Pollard from the List of the Clergy, having been passed upon, and voted down by the Convention, his presumptive right to his seat became absolute, and the matter could only be brought before the Convention again on a motion to reconsider the motion of Mr. Haskell.

Mr. Haskell expressed his views at some length, and said:

"That whilst he was opposed to one name on the list (Mr. Pollard's) he was unwilling to make that the pretext for obstructing or delaying the business of the Convention. The question had been fairly put and lost. The clergyman referred to (Mr. Pollard) had a clear presumptive right to a seat here, and was entitled to it, until he was ousted by a majority of the Convention." Mr. Jersey explained that his side only wanted to get the organization of the Convention completed, and made some remarks sustaining this view.

Col. McCrady said: "That we only ask that this Convention shall be organized at once before going into that other question."

The Bishop said: "*This body has been declared duly organized.*"

After remarks by Col. McCrady, Dr. Porter, Rev. Mr. Bellinger, Mr. T. M. Hanckel, Mr. Benet and Rev. Mr. Tillinghast, Mr. Shand moved that the debate be closed and the vote taken. Mr. Edward McCrady, Sen., here rose and said: "Before the vote is taken, just let me say a few words. The clergymen, it seems, are forcing us to take somebody in that we don't want. The Bishop said "*that the clergymen think that you are trying to put some one out, who is already in, and entitled to be in.*"

Mr. McCrady then said: "Well, that is the difference between us." "The Constitution, as it now stands, is in our favor, for when it was framed the term clergyman meant white man, and it can't mean black man now."

Mr. Benet here interposed a point of order, which resulted in a vote on the motion to divide the question, which was lost.

The vote was then taken on Mr. Seabrook's motion to adopt the Report of the Committee on Credentials of the Clergy, and it was lost by a non-concurrence of orders. The Bishop here arose and said, "that the majority of the two orders having failed to concur, the motion is lost. The Chair is happy to state, however, *that the Convention is duly organized, and is ready for any business that may come before it.*"

The Rev. Mr. Joyner here arose to make a motion, when Mr. Jervey arose, and said "that the Parish of St. Michael's appeals from the decision of the chair." The Bishop then said: "*The chair has made no decision.* It only stated the Canon which affirms that the house is duly organized. If any appeal is made, *it must be an appeal from the Constitution and Canons, not from the Bishop, for he has made no decision.*" Mr. Jervey said: "A delegate arose to make a motion, I say he is out of order. He says he is in order. Is not that a decision?" The Bishop said: "*Under the Constitution and Canons, Is thy he is in order.*" Mr. Jervey said, "Well, I appeal from that ruling."

A delegate here arose and *wanted to know how the motion proposed by the clerical delegate could be out of order when he had not made it.*

Mr. Jervey replied: "That his point of order was, that the delegate was out of order, no matter what motion he made."

Dr. Porter said: "Well, if he can't make a motion, how can you make a point of order." It was finally decided to hear the proposed motion of Rev. Mr. Joyner, who had first obtained the floor. The Rev. Mr. Joyner arose and said: "That the motion *he intended to propose* was that a portion of Bishop's Address be referred to a Special Committee to report to the Convention at a night session." Mr. Jervey said: "I make the point of order that the gentleman's motion is out of order."

The Bishop said: "On what grounds?"

Mr. Jervey said: "On the ground that the Convention is not organized."

The Bishop said: "If the Convention is not organized, how can the appeal be considered?"

A discussion now followed on Parliamentary Law, when the Convention adjourned until 6 o'clock P. M.

The Convention was called to order pursuant to adjournment. The Bishop then said that the question before the Convention was upon the appeal of St. Michael's Church from the ruling of the Chair.

Mr. J. J. P. Smith and the Rev. Mr. Bellinger then addressed the Convention.

The Bishop, before putting the question, said: "That after thinking over the matter, he had come to the conclusion, that he *might have made a mistake in entertaining the appeal*; that two days had been spent in fruitless discussion of this matter; and that he would take occasion to announce now that after the vote on this appeal, he would receive no further appeals in reference to the organization of the Convention, but would go on with the regular business."

The question of appeal was put in this form: "Shall the decision of the Chair stand as the sense of the house?"

There was a vote taken by orders, and a failure of concurrence. The Bishop announced the vote, and said the ruling of the Chair had not been sustained. This was an error on the part of the Bishop. According to Parliamentary Law governing a single body, this is correct; but the Convention was composed of two orders, and the Constitution prescribed the Parliamentary Law, applicable to this point. Article VII, Section I (of this Church) prescribes: "*That on all questions, unless otherwise provided by the Constitution, the members shall deliberate and vote as one body, but at any time, before the result of the vote as taken, is finally announced by the President, any two CLERGYMEN or the Deputies from any two CHURCHES, may call for a separate vote of each order, when the Clergy shall vote INDIVIDUALLY, and the Lay Deputies by Churches (a majority of each Church having one vote) AND A MAJORITY IN BOTH ORDERS SHALL IN EACH CASE BE NECESSARY TO A DECISION.*" Now then, a majority of both orders being necessary under the Constitution to a decision, and there being no decision by the Convention, the ruling of the Chair stood as the ruling of the Convention.

The Bishop then instructed the Secretary to read the Rules of Order, this being the first business in the order of proceedings, prescribed by the Rules of Order. The Secretary had proceeded with the reading of the Rules of Order, when he was interrupted by Mr. McCrady, who said: "Mr. President, I rise to a point of order." The Bishop said:

"What is your point of order?" Mr. McCrady said: "The Convention is not organized, and any business"—

The Bishop here said: "Go on with the reading of the rules, Mr. Secretary."

Mr. McCrady said: "I appeal from the decision of the Chair."

The Bishop said: "*That the Chair has already stated that the Convention is duly organized*, and that it will entertain no other motion or appeals that tend to question its organization."

Mr. McCrady said: "But, Mr. President, let me tell you, sir, that the right of appeal is an inherent one, and no delegate to this Convention can be deprived of it by anybody. If this is attempted it will break up the Convention."

The Bishop said: "Go on with the reading of the rules, Mr. Secretary," which the Secretary did.

A Delegate then moved that the reading of the rules be dispensed with, and the motion was at once adopted.

The Hon. C. G. Memminger then sent up the following paper, with the request that it should be read by the Secretary.

"The Lay Delegates of St. Paul's Church, Radcliffeboro, finding it impracticable to organize the Convention according to the Constitution and Canons of the Church, deem it wise to withdraw, and hereby notify their colleagues of their intention."

Lay Delegates from other Parishes followed suit, leaving present and answering to their names upon a roll call 28 Clergymen, 21 Lay Deputies representing 13 Parishes—more than a constitutional majority. *

The Convention then proceeded with the usual business until 7:30 o'clock P. M., when it adjourned until the next day at the usual hour. The Convention met pursuant to adjournment and proceeded with its regular business.

The Rev. Mr. Tillinghast offered the following resolution, which was unanimously adopted:

"Resolved, That this Convention profoundly regrets the action of the Deputies from certain Parishes in withdrawing

from the Convention yesterday evening, and *affectionately and most earnestly* requests their brethren to reconsider their action and to resume their seats in the Convention."

"Resolved, That this resolution be presented to our absent brethren by a Committee to be appointed by the Chair."

The Bishop appointed the following Committee: The Rev. Mr. Tillinghast, Col. E. M. Rucker and the Rev. John Kershaw.

The Committee reported the following resolution as the reply of the seceding brethren :

"Resolved, That we accede to the request submitted to us by the Committee, provided that when we return and resume our seats in the Convention the President of the Convention shall entertain the appeal taken by Mr. McCrady yesterday, and shall forthwith put the question to the Convention."

The following resolution was then offered by Col. E. M. Rucker :

"Resolved, That the Convention having heard the Report of the Committee appointed by our brethren who withdrew yesterday evening from this body, regrets that they find themselves unable to accede to the proviso therein contained."

This Resolution was seconded by Ex-Governor Manning.

Mr. Haskell then offered the following substitute for the resolution :

Resolved. "That, while the proposition made by the withdrawing members cannot be accepted, this Convention offers, if they will return, to reconsider the action taken since their withdrawal, that they may have a voice on all questions, and in all elections."

This was laid on the table by a vote of the Convention.

All the regular business of the Convention was then proceeded with, until it was completed.

The Bishop then addressed the Convention expressing his profound regret at what had taken place, and giving his views as to the situation and his duties.

The Convention was then adjourned, to meet at Anderson, on the first Wednesday in May, 1888.

These facts are collated from the stenographic report of *The News and Courier*, and are believed to be substantially correct.

What are the salient facts to be deduced from the proceeding of the Convention as set forth above? They are as follows:

The Convention was duly called to order by the officer designated by the Constitution.

The Secretary designated by the Constitution then, in pursuance of the duty imposed upon him by the Canon, called the Roll of Clergymen and Lay Deputies to ascertain if the Constitutional majority was present. Upon the roll call, it was ascertained that there were present thirty-six Clergymen and Lay Deputies from thirty-one Parishes, entitled to representation in the Convention.

The President then declared the Convention *duly* organized in pursuance of Section III, Canon VIII.

There was no question made to the declaration of the President, *that the Convention was duly organized*. The Convention acquiesced in it, and by its acquiescence, made the declaration of the President, *its declaration, as much so as if it had passed a resolution declaring itself duly organized*.

The organization of the Convention became then a *fixed fact*, "*res adjudicata*," *legally ascertained*.

The President then proceeded to appoint Committees on Credentials of Clergymen and Lay Deputies, *which could not be done until the Convention was organized*, as prescribed by Section IV, Canon VIII.

The Convention also acquiesced in this proceeding, without any objection being made as to its organization. The Bishop then delivered his address to the Convention, without a word of dissent as to its organization. The Committee on Credentials of Clergymen then made their report, endorsing the correctness of the roll made by the Secretary from the list furnished by the Bishop. The report was re-

ceived by the Convention without a question as to its organization.

A motion was made for the adoption of the report, which motion was entertained by the Convention without any objection as to its organization.

A motion was made by Mr. Haskell to strike the name of Mr. Pollard (a colored clergyman) from the Roll of Clergymen made by the Secretary, and reported by the Committee as correct.

This motion was entertained by the Convention and debated at length, and voted upon by the Convention by Orders, without question as to its organization.

The Convention having declined to unseat Mr. Pollard, whose presumptive right to a seat in the Convention, under the Constitution of the Church was questioned, and the views of the party who wished to oust him on the ground of his color having been defeated, the question was made *for the first time that the Convention was not duly organized, and could do no business until it was duly organized.*

The proposition amounted to this: *That a Convention which had been regularly called to order, which had its CONSTITUTIONAL OFFICERS, and more than thrice its constitutional quorum, which had been declared duly organized by its constitutional President—which had acquiesced in that declaration, and had further endorsed it by proceeding to business for more than a day and a half, should not only stultify itself, but that it should also disorganize itself; in a word, commit official suicide.*

Such a proposition did not come under any rules of order, it was outside of all rules of order; *it was a revolutionary proposition*, and the President was right in declining to put it before the Convention. In the whole history of legislative bodies, there cannot be found an instance like this.

What was the object of this *revolutionary proposition*? Its object was, *by obstructing all business, to force the CONVENTION to adopt the views of the party which had been defeated, and thus compel it to stultify itself and commit official suicide.*

The President declined to put any more revolutionary propositions of this nature before the Convention, and so

announced his intention, and instructed the Secretary to read the Rules of Order, which was the next business in order, under the "Rules of Order" of the Convention.

The Secretary was reading the Rules of Order when he was interrupted by Mr. McCrady, who said: "Mr. President, let me tell you, sir, that the right of appeal is an inherent one, and no delegate to this Convention can be deprived of it by any one. If this is attempted, it will break up the Convention."

The President had declined to put any more revolutionary motions before the Convention, and in the exercise of his unquestionable official prerogatives had instructed the Secretary to read the Rules of Order, (which he was doing) when this interruption took place. *There was no question before the body, and hence there was nothing to appeal from.*

Our beloved Bishop, as President of the Convention, simply did his duty as a conscientious, enlightened, heroic Christian man and officer, and in a manner worthy of his high and holy office, proving himself a fit successor of the Right Rev. Thomas F. Davis, a man of apostolic character, whose wisdom was only equalled by his saintliness. And so the impartial verdict of history will write it.

NOTE.—Bishop Davis was the author of the move for the admission of St. Marks into the Convention of this Church.

To charge the Bishop with tyranny!!

Why, the real tyranny attempted was on the part of those, who, when their views had been defeated, *aimed to force the Convention to adopt them by revolutionary proceedings.*

But, it was contended, that the Convention was not duly organized, because one clergyman (out of 36), who had a presumptive right to a seat in the Convention under the Constitution of the Church, was not a white man, and this on the ground that the word *Clergyman* in the Constitution meant *white man*. It was contended that the present Constitution of the Diocese was the Constitution of 1789, and that the word *Clergyman* at that time meant *white man*. The word *Clergyman* in 1789 could not mean anything but *white man*. The slave trade at that time was in full activity, and the

colored man was but a chattel, so much so, that the killing of him was not murder, but was only punishable by fine, a matter of dollars and cents

In 1876 the present Constitution was adopted. The present Constitution is substantially the Constitution of 1789, with amendments. The phraseology of the present Constitution is taken from the Constitution of 1789, but the Constitution *is that of 1876*, and when the question of its interpretation arises, *it must be interpreted according to the circumstances which existed in 1876, when it was adopted, and not according to those which existed in 1789.* Now, then, what were the circumstances which existed in 1876, when the present Constitution of this Diocese was adopted, and what in the light of those circumstances is the meaning to be attached to the word *Clergyman* in the Constitution of 1876? In 1876, slavery had been abolished. The colored man had been invested with civil and political rights, and was before the law the equal of the white man. Now, then, could the men who adopted the Constitution of 1876, under the radical change of circumstances which had occurred, have intended that the word *Clergyman in that Constitution* should bear the same exclusive meaning as it did in 1789, when the colored man was a chattel?

It is submitted that there is no rule of legal construction which would sustain such an interpretation. The statement of the proposition makes the argument.

NOTE.—The list of the names of the Clergymen of the Diocese, which the Bishop lays before the Convention, as required by the Canon, constitutes the credentials of the Clergymen, gives them a presumptive right to their seats, and that presumptive right holds good, *even if the right of any Clergyman to his seat be questioned until his qualifications under the Constitution are passed upon by the Convention after it is duly organized.*

The certificates of the election of Lay Deputies constitute the credentials of the Lay Deputies, and give them a presumptive right to their seats, which becomes absolute if their seats are not contested.

If their seats are contested, the Canon provides that their names shall not be placed on the Roll of the Secretary—in other words, that they shall not take their seats until their qualifications are passed upon by *the Convention as a duly organized body.*

